

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 597
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HOUSE PRINCIPAL CLERK

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HOUSE DRH40313-LL-23 (12/30)

Short Title: Mediated Settlement Agreements.

(Public)

Sponsors: Representatives Bishop, Stam, and Glazier (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS REQUIRING MEDIATED SETTLEMENT AGREEMENTS TO BE IN WRITING AND SIGNED BY THE PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

- (1) In proceedings for sanctions under this section;
- (2) In proceedings to enforce or rescind a settlement of the action;
- (3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
- (4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless ~~it~~ the settlement agreement or some memorandum or note of the agreement has been reduced to writing and signed by the ~~parties~~ party to be charged. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

SECTION 2. G.S. 7A-38.3B(i) reads as rewritten:

"(i) Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:



- 1 (1) Where as a matter of law, a matter may be resolved by agreement of the
2 parties, a settlement is enforceable only if ~~it~~the settlement agreement or
3 some memorandum or note of the agreement has been reduced to writing
4 and signed by the ~~parties~~party to be charged.
- 5 (2) In all other matters before the clerk, including guardianship and estate
6 matters, all agreements shall be delivered to the clerk for consideration in
7 deciding the matter."

8 **SECTION 3.** G.S. 7A-38.3D(l) reads as rewritten:

9 "(l) Written Agreements. – Any agreement reached in mediation or some memorandum
10 or note of that agreement shall be reduced to writing and signed by the ~~parties~~party to be
11 charged. A non-attorney mediator may assist parties in reducing the agreement to writing."

12 **SECTION 4.** G.S. 7A-38.4A(j) reads as rewritten:

13 "(j) Evidence of statements made and conduct occurring in a mediated settlement
14 conference or other settlement proceeding conducted under this section, whether attributable to
15 a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding,
16 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or
17 other civil actions on the same claim, except:

- 18 (1) In proceedings for sanctions under this section;
19 (2) In proceedings to enforce or rescind a settlement of the action;
20 (3) In disciplinary proceedings before the State Bar or any agency established to
21 enforce standards of conduct for mediators or other neutrals; or
22 (4) In proceedings to enforce laws concerning juvenile or elder abuse.

23 As used in this subsection, the term "neutral observer" includes persons seeking mediator
24 certification, persons studying dispute resolution processes, and persons acting as interpreters.

25 No settlement agreement to resolve any or all issues reached at the proceeding conducted
26 under this section or during its recesses shall be enforceable unless ~~it~~the settlement agreement
27 or some memorandum or note of the agreement (i) has been reduced to writing and signed by
28 the ~~parties~~party to be charged and (ii) in all other respects complies with the requirements of
29 Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible
30 merely because it is presented or discussed in a settlement proceeding.

31 No mediator, other neutral, or neutral observer present at a settlement proceeding under this
32 section, shall be compelled to testify or produce evidence concerning statements made and
33 conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement
34 conference or other settlement proceeding pursuant to this section in any civil proceeding for
35 any purpose, including proceedings to enforce or rescind a settlement of the action, except to
36 attest to the signing of any agreements, and except proceedings for sanctions under this section,
37 disciplinary hearings before the State Bar or any agency established to enforce standards of
38 conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or
39 elder abuse."

40 **SECTION 5.** G.S. 8-110(a) reads as rewritten:

41 "(a) Evidence of statements made and conduct occurring during mediation at a
42 community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and
43 shall be inadmissible in any proceeding in the action or other actions on the same claim, except
44 in proceedings to enforce a settlement of the action. No such settlement shall be binding unless
45 ~~it~~the settlement agreement or some memorandum or note of the agreement has been reduced to
46 writing and signed by the ~~parties~~party to be charged. No evidence otherwise discoverable shall
47 be inadmissible merely because it is presented or discussed during mediation."

48 **SECTION 6.** This act becomes effective July 1, 2015, and applies to agreements
49 entered into on or after that date.